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No. 82-1766

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

SECURITIES INDUSTRY ASSOCIATION,

Petitioner,

—v.—

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, et al.,

Respondents.

A. G. BECKER INCORPORATED,

Petitioner,

—v.—

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF IN SUPPORT OF JOINT PETITION FOR WRIT OF CERTIORARI

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Respondents' Brief in Opposition confirms that the Joint Petition for Certiorari should be granted.

First, Respondents claim that the numerous other proceedings before financial supervisory agencies cited by Petitioners are "not dependent upon the disposition of this case" and do not "rel[y] on or even cit[e]" the ruling at issue here. (Resp. Br. at 10-11.) Actually, the Federal Deposit Insurance Corporation, to mention just one example, specifically cited the ruling here at issue and the "functional analysis" it adopts, in proposing to authorize new and far-ranging securities under-

writing activities by the 9,000 banks under its jurisdiction (*see* 48 Fed. Reg. 22155)—a proposal that the Chairman of the Securities and Exchange Commission has testified "does violence to the intent of the Glass-Steagall Act." *Daily Executive Report* (BNA), No. 111 at A-17 (June 8, 1983). There simply can be no doubt about the broad impact and importance of the Board's unprecedented action.[1] (*See* Joint Petition 8-12.)

Second, Respondents assert that the Glass-Steagall Act contains ambiguous terms (Resp. Br. at 9), an assertion that flies in the face of half a century of consistent understanding by the commercial banking industry that the plain language of the Act prohibits bank underwriting of commercial paper notes.[2]

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1 Also, in *Securities Industry Ass'n* v. *Federal Reserve Board*, No. 83-4019, slip op. (2d Cir., July 15, 1983) the Second Circuit cited the majority opinion below in deferring to the Board's decision to allow bank holding companies to own discount brokerage subsidiaries, for the first time in half a century. The Comptroller of the Currency, too, is now relying heavily on the ruling here at issue to justify his unprecedented decision to permit national banks to operate mutual funds made up of individial retirement account assets and to distribute shares in the fund to the public in direct contravention of this Court's ruling in *Investment Co. Institute* v. *Camp*, 401 U.S. 617 (1971). *See Investment Co. Institute* v. *Conover*, Civil Action No. 83-0549 (D.D.C.), Defendant's Memorandum of Points and Authorities in Support of Their Motion for Summary Judgment (filed May 6, 1983). And, the Comptroller is also relying on the decision here in attempting to justify his approval of national banks' operating discount brokerage businesses in *Securities Industry Ass'n* v. *Conover*, Civil Action No. 82-2865 (D.D.C.).

2 For nearly fifty years since the Glass-Steagall Act was passed banks refrained from even attempting to underwrite commercial paper notes, reflecting, as this Court stated in *BankAmerica Corp.* v. *U.S.*, 51 U.S.L.W. 4685, 4688 (June 8, 1983), "what was universally perceived as plain statutory language" and indicating that Congress intended the Act "to be interpreted according to its plain meaning."

(Joint Petition at 14-15.) Indeed, by claiming ambiguity in the plain language of the Act and then construing its terms narrowly, Respondents continue squarely to contradict controlling precedent of this Court, both as to proper construction of expansive statutory language generally (*Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 588-9 (1980)) and of the Glass-Steagall Act specifically (*Investment Co. Institute* v. *Camp*, 401 U.S. 617, 635 (1971)).

Third, Respondents argue that the Board "merely found that a certain statutory standard did not apply to a particular set of facts." (Resp. Br. at 9.) Yet, the Brief in Opposition itself concedes the complex regulatory scheme adopted, under a statute that authorizes none. (Resp. Br. at 5.) Indeed, Respondents seek to justify the ruling, not upon the language of the statute itself, but upon policy arguments and alleged "business reality" (Resp. Br. at 9), again confirming the increasing tendency of bank regulators to side-step statutory restrictions that do not suit their policy objectives. (Joint Petition at 11-12.) As this Court only recently reaffirmed, however, policy determinations "must be implemented by Congress, and not by a crabbed interpretation of the words of the statute." *Bank-America Corp.* v. *U.S.*, *supra*. Here, Congress has steadfastly refused to relax the Act's prohibitions (Joint Petition at 10), underscoring the importance of this Court's review of this case.

CONCLUSION

For the reasons set for above and in the Joint Petition for Certiorari, this Court should issue a Writ of Certiorari to review the judgment and opinions of the court below.

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Respectfully submitted,

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